

Message Text

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ACTION L-03

INFO OCT-01 EUR-12 ISO-00 EB-08 COME-00 DOTE-00 FRB-01
OMB-01 ITC-01 SP-02 USIA-15 AGRE-00 AID-05
CIAE-00 INR-10 IO-14 LAB-04 NSAE-00 OIC-02 SIL-01
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R 200800Z MAR 78
FM AMCONSUL HAMBURG
TO SECSTATE WASHDC 4646

UNCLAS SECTION 01 OF 03 HAMBURG 0409

C O R R E C T E D C O P Y FOR SECTIONAL INFO SECTION 01 OF 03
VICE SECTION 01 OF 02:

PASS: KEARNEY, STATE; JOHNSON, MARAD; JACKLIN, TREASURY;
KUTSKE, DRISCOLL, SHEFLER, DOT; FREE COMMERCE

E.O. 11652: N/A
TAGS: OCON, OTRA, AFIN, UNCITRAL, GW
SUBJECT: UNCITRAL - CONFERENCE ON CARRIAGE OF GOODS BY SEA, HAMBURG

SUMMARY: REPORT FOR WEEK OF MARCH 13-17, 1978
THE U.N. CARRIAGE OF GOODS BY SEA CONFERENCE
PROCEEDED TO SERIOUS WORK DURING ITS SECOND
WEEK. COMMITTEE I, THE MAIN WORKING COMMITTEE,
WAS ABLE TO COMPLETE DISCUSSION OF MAIN PRIN-
CIPLES OF CARRIER LIABILITY IN ARTS. 5, 6 AND
8. COMMITTEE II DID SUBSTANTIAL WORK ON FINAL
CLAUSES. THE DRAFTING GROUP BEGAN TO MEET;
AND SEVERAL SPECIAL WORKING GROUPS MET.

1. SHORT RESUME OF ARTICLE BY ARTICLE ACTIVITIES FOLLOWS:
ART. 1: DEFINITIONS OF "SHIPPER" CONTINUED
TO ELUDE COMMITTEE I IN SPITE OF VALIANT EFFORTS BY A
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SPECIAL DRAFTING GROUP, INCLUDING USA.

2. ART. 2: SCOPE OF APPLICATION. NO MAJOR NEW ISSUES
HAVE BEEN RAISED.

3. ART. 3: INTERPRATION OF THE CONVENTION. NO
SIGNIFICANT DISCUSSION.

4. ART. 4: PERIOD OF RESPONSIBILITY. THIS ARTICLE WAS SUBSTANTIALY REVISED, MUCH AT THE INSTANCE OF THE UNITED STATES, IN ORDER TO MAKE POSSIBLE THE APPLICATION OF THE NEW CONVENTION TO CARRIAGE PRESENTLY COVERED BY THE U.S. HARTER ACT. THE NEW FORMULATION IS BASED ON THE PERIOD DURING WHICH THE GOODS ARE IN CHARGE OF THE CARRIER AT THE PORT OF LADING, DURING THE CARRIAGE BY SEA AT THE PORT OF DISCHARGE. WITHIN THIS LIMITATION THE CARRIER IS CONSIDERED TO BE IN CHARGE BASED ON THE PERIOD HE POSSES THE GOODS. CARRIER RESPONSIBILITY ENDS WHEN THE GOODS ARE DELIVERED.

5. ARTICLES 5: BASIS OF LIABILITY, AND 6: LIMITS OF LIABILITY, WERE DEBATED IN TERMS OF FIVE PRINCIPAL QUESTIONS SUBMITTED BY THE CHAIRMAN OF COMMITTEE I. NO VOTES WERE TAKEN. THE QUESTIONS WERE AS FOLLOWS:

I. SHOULD EXONERATION FROM LIABILITY ON GROUNDS OF ERROR OF NAVIGATION BE RESTORED?

II. ARE YOU IN FAVOR OF THE SOLUTION PROPOSED IN ARTICLE 5, PARAGRAPH 4, TO THE EFFECT THAT, IN THE EVENT OF DAMAGE CAUSED BY FIRE, THE BURDEN OF PROOF SHOULD BE ON THE CLAIMANT TO SHOW THAT THE FIRE AROSE FROM FAULT OR NEGLIGENCE ON THE PART OF THE CARRIER, HIS SERVANTS OR AGENTS?

III. AS REGARDS THE LIMITATION OF LIABILITY, SHOULD UNCLASSIFIED

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A DOUBLE CRITERION (PACKAGE AND WEIGHT) OR A SINGLE CRITERION (WEIGHT) BE ADOPTED? WHAT WOULD BE THE AMOUNT OF THE COMPENSATION PER UNIT? IN WHAT CASES SHOULD THERE BE UNLIMITED LIABILITY?

IV. SHOULD LIABILITY FOR DELAY BE EXCLUDED FROM THE SCOPE OF APPLICATION OF THE REGIME OR OF THE CONVENTION? IF NOT, SHOULD A SPECIAL REGIME BE ESTABLISHED WITH RESPECT TO THIS KIND OF PREJUDICE, OR SHOULD IT BE PUT ON THE SAME FOOTING AS PREJUDICE SUFFERED BY LOSS? IF A SPECIAL REGIME SHOULD BE PREFERABLE, ON WHAT BASIS SHOULD THE LIMITATION BE DETERMINED: ON THE BASIS OF THE AMOUNT OF THE FREIGHT OR ON THE BASIS OF A MULTIPLE OF THE FREIGHT?

V. HOW SHOULD THE UNIT OF ACCOUNT BE DETERMINED?

11. REGARDING QUESTION I, USSR, JAPAN, ITALY, FRG, AND AUSTRIA ARGUED FOR RETAINING ERROR OF NAVIGATION, WHILE MOST STATES REMAINED IN OPPOSITION TO CHAMGING TEXT, POSITION WITH WHICH U.S. CONCURRED.

12. REGARDING QUESTION II, MOST STATES PREFERRED THE UNCITRAL DRAFT REGARDING FIRE DESPITE ARGUMENTS FROM U.S.

AND OTHER DELEGATIONS TO REMOVE SPECIAL DEFENSE, WHICH
MIGHT JUSTIFY A LOWER LIMIT OF LIABILITY.

13. REGARDING QUESTION III, DUAL LIMITS WERE ADVOCATED
BY GREECE, MEXICO, ITALY, CANADA, FRG, INDIA, SIERRA
LEONE, UGANDA, U.S., DENMARK, VENEZUELA. SINGLE LIMIT
BASED ON WEIGHT WAS SUPPORTED BY NETHERLANDS. AUSTRALIA,
AUSTRIA, JAPAN, NORWAY, SWEDEN. STATES TEND TO BE
VAGUE ABOUT LIMITS.

14. CANADA SUGGESTED \$4.00 TO \$10.00 PER KILO (3.3 SDRS
TO 8.3 SDRS PER KILO). NETHERLANDS SUGGESTED THAT FIGURE
CHOSEN MUST COVER 75 PERCENT OF ALL CARGOES SHIPPED BY
VALUE WHICH, ON BASIS OF U.S. 1976 FIGURES, WOULD MEAN
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3.3 SDR. D.D.R., FRG, NORWAY, FRANCE, SWEDEN, DEN-
MARK, USSR ALL SUGGESTED THAT THE FIGURE SELECTED
SHOULD APPROXIMATE THE REAL VALUE OF THE 1968 BRUSSELS
PROTOCOL. SUBSEQUENTLY FRG PRIVATELY SUGGESTED 3.5
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INFO OCT-01 EUR-12 ISO-00 EB-08 COME-00 DOTE-00 FRB-01
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R 200800Z MAR 78
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UNCLAS SECTION 2 OF 3 HAMBURG 409

PASS: KEARNEY, STATE; JOHNSON, MARAD; JACKLIN, TREASURY;
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15. FRG ANXIOUS TO SEE HAMBURG RULES OF 1978 A REALITY AND HAVE PROPOSED INFORMALLY A PACKAGE DEAL WHEREBY NAUTICAL FAULT WOULD BE DELETED, FIRE DEFENSE WOULD BE RETAINED. DELAY WOULD BE AMENDED TO STRIKE OUT CONSEQUENTIAL LOSSES AND ATHENS AND LONDON FORMULA RE UNBREAKABLE LIMITS IN ART. 8 WOULD BE INSERTED WITH A DOUBLE STANDARD OF UNIT LIMIT BASED ON 3.5 SDR PER KILO.

16. NO DELEGATION HAS FORMALLY SUGGESTED A PACKAGE LIMIT, ALTHOUGH CANADA HAS PROPOSED \$1500.00.

17. U.S. MADE ITS STATISTICAL STUDIES PART OF THE RECORD OF CONVENTION, AS DID CANADA, WHOSE FIGURES ARE VERY SIMILAR TO OUR OWN. ADDITIONALLY, AT SUGGESTION OF MEXICO, U.S. CIRCULATED INFORMAL PAPER TO PUT TOGETHER ON SINGLE PAGE ALTERNATIVE PROPOSALS REGARDING ART. 6 AMOUNT, ART.5 FIRE AND NAUTICAL FAULT AND ART. 8 BREAK-ABILITY OF UNIT LIMITS. COPY OF U.S. INFORMAL PAPER ATTACHED, ALTHOUGH IT SHOULD BE NOTED THAT THERE ARE NOW A NUMBER OF FURTHER INFORMAL PAPERS BEING CIRCULATED UNCLASSIFIED

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BY MEXICO, NETHERLANDS, CANADA, AND FRG.

18. REGARDING QUESTION IV, BY FAR MOST STATES SPOKE IN FAVOR OF INCLUDING DELAY WITHIN THE CONVENTION AS PROPOSED IN THE UNCITRAL DRAFT.

19. REGARDING QUESTION V, IMF OBSERVER INTRODUCED DRAFT TEXT. HOWEVER, ALMOST ALL STATES PREFERRED THE UNIT OF AMOUNT FORMULA OF THE 1976 LONDON CONFERENCE AS REPRODUCED IN SEVEN-NATION PROPOSAL (REFSEPTEL NO. 386). THIS SUPPORT BECAME APPARENT AFTER THE SOVIET BLOC INDICATED THAT IT COULD NOT ACCEPT THE NEW DRAFT OF THE IMF OBSERVER BUT THAT THE LONDON FORMULA WOULD BE ACCEPTABLE.

20. CHAIRMAN IS NOW SEEKING TO CREATE A COMPROMISE "PACKAGE DEAL," WITHOUT ESTABLISHING A FORMAL WORKING GROUP, BUT BY CONSULTING PRIVATELY WITH "FRIENDS OF THE CHAIRMAN, I.E. KEY DELEGATES. HE WILL ANNOUNCE RESULT OF HIS CONSULTATIONS NEXT WEEK.

21. ART. 8: LOSS OF RIGHT TO LIMIT LIABILITY. U.S. CONTINUED TO PRESS THE POINT THAT LIMITS SHOULD BE PRACTICALLY UNBREAKABLE. THIS IS ALSO PART OF THE COMPROMISE PACKAGE.

22. ART. 9: DECK CARGO. COMMITTEE REJECTED FRENCH PROPOSAL TO ESTABLISH PRESUMPTION THAT THE SHIPPER HAS AGREED TO DECK CARRIAGE WHENEVER HE SHIPS GOODS IN

CONTAINERS.

23. ART. 10: LIABILITY OF THE CARRIER AND ACTUAL CARRIER.
COMMITTEE CONSIDERED SEVERAL DRAFTING PROPOSALS TO CLARIFY
THAT THE ACTUAL CARRIER IS FULLY LIABLE AS STIPULATED IN
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THE BASIC CONTRACT OF CARRIAGE AS DEFINED IN ARTICLE 1(5).

24. ART. 11: THROUGH CARRIAGE. AFTER EXTENSIVE DISCUS-
SION THE COMMITTEE DEFEATED PROPOSAL OF CANADA AND DDR,
ENDORSED BY U.S., TO ENTIRELY DELETE PROVISION ON THROUGH
CARRIAGE. VOTE WAS 18 IN FAVOR OF DELETION, 36 OPPOSED,
AND 8 ABSTENTIONS. U.S. ARGUED STRONGLY FOR COMPLETE
DELETION. CHAIRMAN HAS ESTABLISHED WORKING GROUP TO
CONSIDER MANY AMENDMENTS TABLED BY U.S. AND OTHER
DELEGATIONS.
PETERS

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R 200800Z MAR 78
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UNCLAS SECTION 3 OF 3 HAMBURG 409

PASS: KEARNEY, STATE; JOHNSON, MARAD; JACKLIN, TREASURY;
KUTSKE, DRISCOLL, SHEFLER, DOT; FREE COMMERCE

INFORMAL ILLUSTRATION OF THE EFFECTS OF
ARTS. 5, 6, AND 8 ON EACH OTHER

ART. 6 ART. 5 ART. 5 ART. 8

SDR NAUTICAL FAULT FIRE DEFENSE BREAKABILITY
PER KILO OF UNIT
(APPROX) LIMITATION

1

1.5

2 PRESENT TEXT OF NO SPECIAL DE- BREAKABLE
UNCITRAL FENSE, USE LIMITS (OLD
ART. 5(1) RULE HAGUE RULES

2.5

3

3.5 PRESENT TEXT OF
UNCITRAL 5(4)

4 FORMULA PER-

4.5 MITTING CARRIER CARRIER MUST
DEFENSE ONLY IN PROVE SEAWORTHI-

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5 CASES OF COLLI- NESS OF FIRE PRESENT TEXT
SION & STRANDING FIGHTING EQUIP. OF ART. 8

5.5 AND TRAINING OF

6 CREW.

6.5

7 NEGL. NAVIGATION

UMT FORMULA

8. OLD HAGUE RULES UNBREAK-

8.5 FIRE DEFENSE ABLE LIM-

9 (PROOF OF PRIVITY TS (ATHENS

9.5 1974 &

LONDON 1976)

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THE U.N. CARRIAGE OF GOODS BY SEA CONFERENCE
TAGS: OCON, OTRA, AFIN, GE, UNCITRAL
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